IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11081 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESHBHAI @ KALIDAS GIRDHARLAL THAKKAR

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 11081 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2002

ORAL JUDGEMENT

1. District Magistrate, Ahmedabad, passed an order on November 12, 2001, in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 ("PBM Act"

for short), detaining the petitioner under the provisions of the said Act.

2. The petitioner is alleged to have indulged himself in activities detrimental to smooth supply of essential commodities like wheat and rice. The detaining authority also observed that it is not possible to resort to less drastic remedies.

3. The only ground that is contended by learned advocate Mr. Gondalia is that a representation addressed on behalf of the detenu by his wife on 2.1.2002 was received by the detaining authority on 3.1.2002. But it was sent to the Government on 10.1.2002. Therefore, there was delay in forwarding the representation which has affected the right of the detenu of making an effective representation which would vitiate his continued detention. He has drawn attention of this Court to the affidavit in reply filed on behalf of the State Government, which indicates that the District Magistrate forwarded the said representation vide his communication dated 10.1.2002. He, therefore, urged that the petition may be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition. He does not dispute the factual part of the date of representation, receipt of representation and forwarding of representation by the detaining authority. The learned Assistant Government Pleader, after consulting the file, states that the said representation was received by the office of the detaining authority on 3.1.2002 and it was forwarded to the Government on 10.1.2002.

5. Considering rival side contentions, there is not dispute with regard to the factual aspects. It appears that the detaining authority was conscious of the fact that it has not to consider the representation on merits as the order of detention was already approved by the State Government and it was only required to forward the same. For forwarding the representation, the detaining authority has consumed seven days, which has remained unexplained. This delay in forwarding the representation has infringed the right of the detenu of making an effective representation and can be said to be sufficient to vitiate continued detention. In this regard, decision in the case of Harish Pahwa v. State of U.P., A.I.R. 1981 SC 1126 can be profitably be considered. In view of this legal position, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated November 12, 2001, passed against the detenu is hereby quashed. The detenu-Kamleshbhai @ Kalidas Girdharlal Thakkar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

gt